

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE

EIGHTY-SECOND LEGISLATIVE DAY
FRIDAY, APRIL 1, 2005

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 9:30 a.m.

Roll call showed all members present except Senators Pearce and Fulcher, absent and formally excused by the Chair; and Senators Gannon, Stegner, Sweet, and Werk, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Sam Vanderwall, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of March 31, 2005, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Gannon, Stegner, and Werk were recorded present at this order of business.

March 31, 2005

The JUDICIARY AND RULES Committee reports that Enrolled **S 1062**, as amended, as amended in the House, **S 1086**, as amended, **S 1104**, **S 1160**, **S 1163**, as amended, **S 1164**, as amended, as amended in the House, **S 1179**, as amended in the House, **S 1180**, **S 1189**, **S 1192**, **S 1196**, **S 1210**, **S 1211**, **S 1212**, **S 1213**, **S 1214**, **S 1215**, **S 1216**, **S 1217**, **S 1220**, **S 1224**, **S 1225**, **S 1228**, and **S 1230** were delivered to the Office of the Governor at 3:55 p.m., March 31, 2005.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

March 31, 2005

The JUDICIARY AND RULES Committee reports that Enrolled **SCR 118** was delivered to the Office of the Secretary of State at 2:34 p.m., March 31, 2005.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

March 31, 2005

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have appointed Kara Fulcher of Meridian, Idaho, to be Acting State Senator for Legislative District 21. This appointment will be effective April, 1, 2005, and continue until such time as Senator Russell M. Fulcher is able to resume his duties.

Sincerely,
/s/ Dirk Kempthorne
Governor

THE OFFICE OF THE GOVERNOR EXECUTIVE DEPARTMENT BOISE, IDAHO CERTIFICATE OF APPOINTMENT

KNOW ALL MEN, by these Presents that pursuant to the provisions of Section 59-917, *Idaho Code*, Russell M. Fulcher, State Senator, District 21, Ada County, State of Idaho, has nominated Kara Fulcher of Meridian, Idaho, to perform the duties of this office temporarily as Acting State Senator, District 21, Ada County.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the authority vested in me do hereby appoint Kara Fulcher, to the office of State Senator, District 21, Ada County, State of Idaho, for a term commencing on Friday, April 1, 2005, and continuing until such time as Senator Russell M. Fulcher is able to resume his duties.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho.

Done at Boise, the Capital of Idaho, this thirty-first day of March, in the year of our Lord Two thousand and five and of the Independence of the United States of America, the two hundred and twenty-ninth year.

/s/ BY THE GOVERNOR DIRK KEMPTHORNE
/s/ SECRETARY OF STATE BEN YSURSA

The correspondence and Certificate of Appointment were ordered filed in the office of the Secretary of the Senate.

The President Pro Tempore announced that the Oath of Office had been administered previously to Acting Senator Kara Fulcher, and she was recorded present at this order of business.

March 31, 2005

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to advise you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1044, as amended, **S 1122**, as amended in the House,
S 1134, **S 1136**, as amended, **S 1154**, as amended,
S 1156, **S 1161**, as amended, **S 1166**

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

March 31, 2005

Mr. President:

I transmit herewith **H 395**, **H 396**, and **H 397** which have passed the House.

JUKER, Chief Clerk

H 395, **H 396**, and **H 397** were filed for first reading.

March 31, 2005

Mr. President:

I transmit herewith **H 399** and **HCR 28** which have passed the House.

JUKER, Chief Clerk

H 399 and **HCR 28** were filed for first reading.

March 31, 2005

Mr. President:

I transmit herewith Enrolled **HJM 8**, **H 325**, **H 377**, **H 378**, **H 379**, **H 380**, **H 381**, **H 382**, **H 383**, **H 384**, **H 385**, **H 350**,

H 365, **H 376**, **HCR 26**, **HCR 16**, **HCR 18**, **HCR 22**, **HCR 23**, **HCR 25**, **H 230**, **H 336**, as amended, **H 388**, **H 389**, **H 390**, and **H 393** for the signature of the President.

JUKER, Chief Clerk

The President Pro Tempore signed Enrolled **HJM 8**, **H 325**, **H 377**, **H 378**, **H 379**, **H 380**, **H 381**, **H 382**, **H 383**, **H 384**, **H 385**, **H 350**, **H 365**, **H 376**, **HCR 26**, **HCR 16**, **HCR 18**, **HCR 22**, **HCR 23**, **HCR 25**, **H 230**, **H 336**, as amended, **H 388**, **H 389**, **H 390**, and **H 393** and ordered them returned to the House.

March 31, 2005

Mr. President:

I return herewith **S 1170**, as amended, **S 1198**, **S 1197**, as amended, **SJM 109**, **S 1229**, **S 1231**, **S 1232**, **S 1233**, **S 1234**, and **SCR 110** which have passed the House.

JUKER, Chief Clerk

S 1170, as amended, **S 1198**, **S 1197**, as amended, **SJM 109**, **S 1229**, **S 1231**, **S 1232**, **S 1233**, **S 1234**, and **SCR 110** were referred to the Judiciary and Rules Committee for enrolling.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

Senator Sweet was recorded present at this order of business.

H 395, **H 396**, and **H 397**, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 399, by Ways and Means Committee, was introduced, read the first time at length, and referred to the Resources and Environment Committee.

HCR 28, by Ways and Means Committee, was introduced, read at length, and referred to the Resources and Environment Committee.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

April 1, 2005

The JUDICIARY AND RULES Committee reports that **S 1170**, as amended, **S 1198**, **S 1197**, as amended, **S 1229**, **S 1231**, **S 1232**, **S 1233**, **S 1234**, **SCR 110** and **SJM 109** have been correctly enrolled.

DARRINGTON, Chairman

The President Pro Tempore signed Enrolled **S 1170**, as amended, **S 1198**, **S 1197**, as amended, **S 1229**, **S 1231**, **S 1232**,

S 1233, S 1234, SCR 110 and **SJM 109** and ordered them transmitted to the House for the signature of the Speaker.

The Senate advanced to the Seventh Order of Business.

Reports of Special Committees

April 1, 2005

President Jim Risch
Idaho State Senate

Dear President Risch:

The Senate Conference Committee appointed to confer on **H 386**, as amended in the Senate, has met with the House Conference Committee on **H 386**, as amended in the Senate, and the Committees do jointly agree and recommend:

1. That **H 386**, as amended in the Senate, be returned to the Senate, and,
2. That the Senate recede from its former amendments to **H 386**, as amended in the Senate, and
3. That **H 386**, as amended in the Senate, be amended in the Senate, as follows:
 - a. That the June 30, 2007, sunset clause on the increase in the tax upon cigarettes be removed from the bill so as to allow the increase to continue.
 - b. That 5.174 cents of the tax collected per package on cigarettes be appropriated to the public school income fund and 5.174 cents of the tax collected per package be appropriated to the department of juvenile corrections.
 - c. That on and after July 1, 2005, the compensation for affixing stamps on the face value of the stamps purchased by wholesalers shall be three and three tenths percent (3.3%), and further, that the amount of the compensation for affixing stamps be reviewed during the 2006 legislative session, after additional cost information is obtained.
 - d. That on and after July 1, 2005, distribution of tobacco tax revenues shall be as follows:
 - (1) 17.3% of the balance to the permanent building fund.
 - (2) 0.4% of the balance to the central tumor registry.
 - (3) 1% of the balance to the cancer control account.
 - e. That 21.25% of the balance of the tobacco tax revenues shall be distributed to the general fund for the fiscal year 2006 only.
 - f. That for fiscal year 2006, all remaining tobacco tax revenue be distributed to the Economic Recovery Reserve Fund.

- g. That for fiscal years on and after July 1, 2006, all remaining tobacco tax revenues be distributed to the Permanent Building Fund to be used for the repair, remodel and restoration of the state Capitol Building and state facilities pertaining to the Capitol restoration until such time as the Capitol restoration is adequately funded, as certified by the Director of the Department of Administration, and thereafter that all remaining tobacco tax revenues be distributed to the Economic Recovery Reserve Fund.

SENATORS

/s/ Dean Cameron
/s/ Hal Bunderson
/s/ Clint Stennett

REPRESENTATIVES

/s/ Dell Raybould
/s/ Wendy Jaquet
(Jim Clark declined to sign the report)

On request by Senator Davis, granted by unanimous consent, the Conference Committee Report and **H 386**, as amended in the Senate, were referred to the Tenth Order of Business, Motions and Resolutions, and held for one legislative day, pursuant to Senate Rule 21(A).

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Tenth Order of Business.

Motions and Resolutions

On request by Senator Davis, granted by unanimous consent, all rules of the Senate interfering with the immediate consideration of the Conference Committee Report pertaining to **H 386**, as amended in the Senate, were suspended and the Report was placed before the Senate for consideration at this time.

On motion by Senator Cameron, seconded by Senator Stennett, by voice vote the Conference Committee Report was adopted.

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, **H 386**, as amended in the Senate, was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President Pro Tempore declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President Pro Tempore called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **H 386**, as amended in the Senate, without recommendation, amended as follows:

**SENATE AMENDMENT TO THE SENATE
AMENDMENT TO H 386**

AMENDMENT TO THE AMENDMENT TO THE BILL

On page 1 of the printed amendment, delete lines 4 through 41; delete pages 2 and on page 3, delete lines 1 through 16 and insert:

""SECTION 1. That Section 63-2506, Idaho Code, be, and the same is hereby amended to read as follows:

63-2506. IMPOSITION OF TAX. (1) ~~From June 1, 2003, through June 30~~ On and after July 1, 2005, a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of fifty-seven cents (57¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. 5.1746¢ of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. 5.1746¢ of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services.

(2) ~~On and after July 1, 2005, a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of twenty-eight cents (28¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services.~~

~~(3) Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.~~

~~(4) The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code.~~

SECTION 2. That Section 63-2509, Idaho Code, be, and the same is hereby amended to read as follows:

63-2509. COMPENSATION FOR AFFIXING STAMPS. ~~From June 1, 2003, through June 30, 2005, wholesalers shall be allowed as compensation for affixing stamps, two and sixty-one one-hundredths percent (2.61%) of the face value of the stamps purchased by them. On and after July 1, 2005, wholesalers shall be allowed as compensation for affixing stamps, five three and three-tenths percent (53.3%) of the face value of the stamps purchased by them.~~

SECTION 3. That Section 63-2520, Idaho Code, be, and the same is hereby amended to read as follows:

63-2520. DISTRIBUTION OF MONEYS COLLECTED. Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) ~~From July 1, 2003, through June 30~~ On and after July 1, 2005, the balance remaining with the state treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:

(1) 17.3% of such balance shall be distributed to the permanent building ~~account fund~~ created by section 57-1108, Idaho Code.

(2) 0.4% of such balance shall be distributed to the central tumor registry account. The amount of money so distributed to the central tumor registry account shall not exceed the fiscal year's appropriation, and at such time as the appropriation has been distributed to the central tumor registry account during any fiscal year, all such distributions in excess of the appropriation shall be made instead to the general fund of the state of Idaho.

(3) 1% of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:

(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;

(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general fund on July 1 and the state controller shall order such transfer.

(4) 21.25% of such balance shall be distributed to the general fund of the state of Idaho for the fiscal year commencing July 1, 2005 through June 30, 2006.

(5) All remaining moneys shall be distributed as follows: For the fiscal year commencing July 1, 2003~~5~~, and ending June 30, 2004~~6~~, \$23,500,000 shall be distributed to the general fund of the state of Idaho and the remainder all moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code. For fiscal years on and after July 1, 2006, all moneys shall be distributed to the permanent building fund with the moneys to be used for the repair, remodel and restoration of the state capitol building and state facilities pertaining to the capitol restoration until such time as the capitol restoration is adequately funded as certified by the director of the department of administration. Thereafter all moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code. For the fiscal year commencing July 1, 2004, and ending June 30, 2005, all remaining moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code.

~~(c) On and after July 1, 2005, the balance remaining with the state treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:~~

~~(1) 43.3% of such balance shall be distributed to the permanent building fund created by section 57-1108, Idaho Code.~~

~~(2) 1% of such balance shall be distributed to the central tumor registry account. The amount of money so distributed to the central tumor registry account shall not exceed the fiscal year's appropriation, and at such time as the appropriation has been distributed to the central tumor registry account during any fiscal~~

year, all such distributions in excess of the appropriation shall be made instead to the general fund of the state of Idaho.

~~(3) 2.5% of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:~~

~~(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;~~

~~(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general fund on July 1 and the state controller shall order such transfer.~~

~~(4) All remaining moneys shall be distributed to the general fund of the state of Idaho."~~

AMENDMENT TO THE CORRECTION TO TITLE

On page 3, delete lines 18 through 22 and insert:

"On page 1, delete lines 3 through 9 and insert: "THE RATE OF THE CIGARETTE TAX EFFECTIVE JULY 1, 2005, AND TO REVISE DISTRIBUTIONS; AMENDING SECTION 63-2509, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO COMPENSATION FOR AFFIXING STAMPS; AND AMENDING SECTION 63-2520, IDAHO CODE, TO REVISE THE DISTRIBUTION FORMULA FOR CERTAIN CIGARETTE TAX MONEYS."."

The Committee also has **H 150**, **H 202**, **S 1172** and **H 254**, as amended in the Senate, under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Malepeai, the report was adopted by voice vote.

H 386, as amended in the Senate, as amended in the Senate, was filed for first reading as amended and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

April 1, 2005

The JUDICIARY AND RULES Committee reports that Senate amendments to **H 386**, as amended in the Senate, have been correctly printed.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

Suspension of Rules

On request by Senator Davis, granted by unanimous consent, all rules of the Senate interfering with the immediate passage of **H 386**, as amended in the Senate, as amended in the Senate, were

suspended, and the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days were dispensed with, this being a case of urgency, and **H 386**, as amended in the Senate, as amended in the Senate, was read the first time by title, the second time by title, and the third time at length, section by section, and put upon its final passage.

H 386, as amended in the Senate, as amended in the Senate, was read the first time by title, the second time by title, and the read the third time at length, section by section, and placed before the Senate for final consideration. Senator Cameron arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Broadsword, Bunderson, Cameron, Coiner, Compton, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Stegner, Stennett, Werk, Williams. Total - 28.

NAYS--Brandt, Burtenshaw, Richardson, Schroeder, Sweet. Total - 5.

Absent and excused--Burkett, Pearce. Total - 2.

Total - 35.

Whereupon the President Pro Tempore declared **H 386**, as amended in the Senate, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:10 p.m. until the hour of 1:30 p.m., Monday, April 4, 2005.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary